



COMMONWEALTH OF VIRGINIA
Department of Education
Division of Special Education and Student Services

CROSSWALK OF MAJOR IDEA '04 MANDATES AND PROPOSED FEDERAL REGULATIONS, PART B
[July 2005]

The Individuals with Disabilities Education Improvement Act 2004, P. L. 108-446, was signed into law on December 3, 2004 by President George W. Bush. The provisions of this Act [hereinafter IDEA '04] were effective July 1, 2005, with the exception of some elements of the definition of "highly qualified teacher" that took effect on December 3, 2004.

On June 21, 2005, the U.S. Department of Education's Office of Special Education and Rehabilitative Services published their Notice of Proposed Rulemaking with the proposed federal regulations implementing the IDEA '04. (70 Fed Reg 118, Proposed Rules). The purpose of the attached document is to provide parents, school administrators, and other consumers with a crosswalk of the major IDEA '04 mandates and the proposed federal regulations.

The proposed federal regulations incorporate the provisions of the new IDEA '04 along with many of the current 1999 federal regulations, as well as create several new requirements. The intent is to provide a comprehensive document, rather than shifting between the statute and regulations. Although this means the proposed regulations document will be longer, it will facilitate having one single reference document.

While revision of local policies and procedures will reflect the statutory changes of IDEA '04, reviewers are cautioned not to expect revisions to local policies and procedures based on the proposed federal regulations which are in draft stage only. It is premature to revise local policies and procedures, based on the proposed regulations.

CROSSWALK OF MAJOR IDEA '04 MANDATES AND PROPOSED FEDERAL REGULATIONS, PART B, SUBPARTS A THROUGH E

The following identifies the major changes in the statute, IDEA '04, and the corresponding regulations, including explanations of additional requirements.

IDEA '04 MANDATE	PROPOSED FEDERAL REGULATION
<p>Assistive technology services §1401 (1)(B)(2) Mirrors the definition for assistive technology <u>device</u> in excluding a medical device that is surgically implanted, or the replacement of that device.</p>	<p>§300.6 Section 300.5 contains the same exclusion of such a device, however §300.6 related to assistive technology <u>services</u> is silent regarding the services attendant to such a medical device. Therefore, it is unclear whether such services are excluded or if the IEP team determines the services. Note also that §300.34 (related services) does not clarify this item.</p>
<p>Highly Qualified §1401 (10)(A), (B), (C), (D) The term has the meaning given the term in the No Child Left Behind Act of 2001.</p>	<p>§330.18 Highly Qualified Special Education Teacher Incorporates the IDEA '04 language <u>and</u> specifies that “highly qualified” applies only to public elementary and secondary school special education teachers. The “highly qualified” requirements do not apply to private school teachers, even when the local school division (LEA) places the child.</p>
<p>Related services §1401 (26)</p>	<p>The proposed regulation, §300.34, incorporates the language of the current '99 regulation. Consistent with the exclusion noted in §300.5, this regulation does not include the costs of maximizing the functioning or the maintenance of a surgically implanted device.</p> <p>Additionally, this proposed regulation includes two new provisions:</p>

	<p>“interpreting services” as used with respect to children who are deaf or hard of hearing, includes oral transliteration services, cued language transliteration services, and sign language interpreting services.</p> <p>“school nurse services” means services provided by a qualified school nurse, designed to enable a child with a disability to receive FAPE as described in the child’s IEP.</p>
<p>Other Definitions: See Guidance Document, pp. 4 - 6</p> <p>Guidance Document on the Implementation of IDEA 2004 – Part B Requirements, May 2005, Virginia Department of Education http://www.doe.virginia.gov/VDOE/dueproc/</p> <p>Core academic subjects §1401(4) Developmental delay §1401 (3)(B) Homeless children §1401 (11) Parent §1401(23) Transition Services §1401 (34) Universal Design §1401 (35) Ward of the State §1401 (36)</p>	<p>The proposed regulations incorporate the new statutory language. Retains the other definitions in the current regulations.</p>
<p>Related services personnel and paraprofessionals §1412 (a)(14)(B) See Guidance Document, p. 6</p>	<p>The proposed regulation, §300.156, incorporates the new statutory language and generally retains the current regulations.</p>
<p>Comprehensive System of Personnel Development and Personnel Standards Deleted in the IDEA ‘04</p>	<p>Deletes current regulations.</p>

<p>Overidentification and disproportionality §1412 (a)(24) See Guidance Document, p. 6</p>	<p>The proposed regulation, §300.173, incorporates the new statutory language.</p>
<p>Children with Disabilities Enrolled by their parents in private schools §1412 (a)(10)(A) See Guidance Document, pp. 21 - 22</p>	<p>§§300.131; 132 (a) The proposed regulations incorporate the new statutory language and clarify that the provisions governing parentally-placed children with disabilities who are enrolled in private schools are the responsibility of the LEA where the private school is located.</p>
<p>State Complaint Procedures Like its statutory predecessors (P. L. 94-142; IDEA '97), the IDEA '04 is silent regarding state complaint procedures. Until 1992, the U.S. DOE maintained the complaint procedures in 34 Code of Federal Regulations §§76.780 – 76.782. After 1992, the U.S. DOE moved these requirements to the Part B federal regulations.</p>	<p>Retains the current regulations. Revises or adds new requirements as follows:</p> <p>§300.151 (b)(1) Removes reference to monetary reimbursement as a corrective action option so as not to imply that such reimbursement would be appropriate to the majority of complaints.</p> <p>§300.152 (a)(3) Provides the LEA an opportunity to resolve the complaint with the parent. [Note that this provision is already in VDOE's procedures.]</p> <p>§300.152 (b)(1) Allows the 60-day timeline to be extended if the parties agree to the extension in order to resolve the complaint.</p> <p>Removes the current §300.661 (c)(3) regarding the LEA's implementation of a hearing officer's order being the subject of the complaint process. Rationale: these are matters only subject to a court's review.</p> <p>§300.153 (b)(3) and (4) Adds new information requirements for the complainant to include in filing a complaint. States must</p>

	<p>develop a model complaint form, similar to the state's model due process form.</p> <p>§300.153 (c) Revises the statute of limitations to limit the filing of the complaint to 1 year; removes references to longer periods for continuing violations and for compensatory services claims.</p> <p>§300.153 (d) Adds that the complaint must be filed simultaneously with the LEA.</p>
<p>Consent The following consent requirements revised by the IDEA '04 include:</p> <ul style="list-style-type: none"> • Parental consent is required prior to the LEA providing initial special education and related services. §1414 (a)(1)(D)(i)(II) • LEAs may not use due process to seek to provide services if parents have failed to provide consent for services. If the parents refuse consent for services, the LEA will not be considered to have failed to provide FAPE to the child and shall not be required to convene IEP meetings about the child. §1414 (a)(1)(D)(ii)(II) & (III) • Consent relative to students who are wards of the state. §1414 (a)(1)(D)(iii) <p>See Guidance Document, pp. 16-17</p>	<p>Proposed regulations incorporate the new statutory language and generally retain other current provisions. Additionally,</p> <p>§300.300 (a)(3) permits consent override only for children who are enrolled in public schools or seeking to be enrolled in public school. Consent override is not permitted for children who are home schooled or parentally placed.</p> <p>§300.154 (d)(2)(iv), relative to LEAs accessing public insurances, requires that LEAs must obtain parental consent <u>the first time</u> the LEA wants to access the parent's public insurance. The proposed provision also adds that the LEA must notify parents that their refusal does not relieve the LEA of its responsibility to ensure that all required services are provided at no cost to parents.</p> <p>§300.154 (c) retains the current requirements regarding LEAs accessing private insurances, including requiring consent <u>each time</u> the LEA wants to access the parent's private insurance.</p>

<p>Evaluation – Eligibility See the Guidance Document, pp. 7 – 11 regarding the following IDEA '04 changes:</p> <ul style="list-style-type: none"> • Determining eligibility factors §1414 (b)(5)(A) • FAPE requirements §1412 (a)(1)(C) • Conduct of the evaluation §1414 (b)(2)(A) & (B) • Early intervening services §1413 (f) • Elements to be evaluated §1414 (c)(1)(B)(i) & (ii) • Initial evaluations timelines §1414 (a)(1)(C); (b)(3)(D) • Reevaluations §§1414 (a)(2); (c)(4)(ii) • Native language §1414 (b)(3)(A)(ii); (iv) & (v) • Screening §1414 (a)(1)(E) • Prohibition – Mandatory Medication §1412 (a)(25) • Termination of Eligibility §1414 (c)(5)(B)(1) 	<p>Proposed regulations incorporate the new statutory language and generally retain other current regulations.</p>
<p>Specific learning disabilities §1414 (b)(6)</p> <p>See Guidance Document, p. 10</p>	<p>Proposed regulations reflect the new statutory language and generally retain the other current regulations. Additionally,</p> <p>§300.307 (a)(1) allows states to prohibit the use of severe discrepancy between achievement and intellectual ability criterion for determining whether a child has an SLD.</p> <p>§300.307 (b) clarifies that an LEA must use the state's criteria in determining whether the child has an SLD.</p> <p>§300.308 adds that the team determining whether the child has a specific learning disability must include a special education teacher.</p>

	<p>§300.309 revises the elements required for determining the existence of an SLD:</p> <ul style="list-style-type: none"> • the child does not achieve commensurate with the child's age in 1 or more of the 8 specific areas when provided with learning experiences appropriate to the child's age. [The 8 areas: oral expression; listening comprehension; written expression; basic reading skill; reading fluency skills; reading comprehension; mathematics calculation; mathematics problem solving.] • the child failed to make sufficient progress in meeting state-approved results when using a response to scientific, researched based intervention process, or the child exhibits a pattern of strengths and weaknesses that the team determines is relevant to the identification of an SLD. Prohibited: if the SLD is primarily the result of other visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage. • the child was provided appropriate instruction prior to, or as a part of, the referral process. <p>§300.309 (d) The timeline for completing the evaluation process and eligibility determination may be extended by mutual written agreement of the child's parents and the IEP team.</p> <p>§300.310 requires that at least one team member, other than the child's current teacher, <u>who is trained in observation</u>, shall observe the child, and the learning environment, including the regular education setting, to document academic performance and behavior in the areas of difficulty.</p>
--	--

	<p>§300.311 regarding the written report, retains the current provisions, removes the current regulation as to whether the child has a severe discrepancy between achievement and ability, removes the reference to the effects of environmental, cultural, and economic disadvantage. Adds two additional factors to the written report:</p> <ul style="list-style-type: none"> • whether there are strengths and weaknesses in performance and achievement, or both, or relative to intellectual development that require special education and related services; and, • the instructional strategies used and the response to student data collected if the response to the scientific, research-based process was implemented.
<p>IEP See Guidance Document, pp. 11–15 regarding the following changes:</p> <p><u>Content</u></p> <ul style="list-style-type: none"> • Content §1414 (d)(3)(A)(iv) • Present Level of Performance §1414 (d)(1)(A)(i)(1); and (aa) • Goals §1414 (d)(1)(A)(i)(11) • Benchmarks/Objectives §1414 (d)(1)(A)(i)(1) & (11) • Progress reports §1414 (d)(1)(A)(i)III) • Essential components §1414 (d)(1)(A)(ii) • Statement of services §1414 (d)(1)(A)(i)(IV) • Accommodations/ Assessments §1414 (d)(1)(A)(i)(VI) 	<p>Proposed regulations incorporate the new statutory language and generally retain the other current regulations.</p>

<p><u>Meetings</u></p> <ul style="list-style-type: none"> • Revising the IEP §1414 (d)(3)(D) and (F) • Team membership §1414 (d)(1)(C)(i) • Transfer students §1414 (d)(1)(c) • Excusal of member §1414 (d)(1)(C)(ii) • Alternate means §1414 (f) • Part C member §1414 (d)(1)(D) • Consolidation of meetings §1414 (d)(3)(E) 	<p>Proposed regulations incorporate the new statutory language and generally retain the other current regulations. Additionally,</p> <p>§300.322 (d), regarding conducting a meeting without a parent attending, eliminates the specificity of the methods that the LEA must use to keep a record of its attempts to convince the parent that s/he should attend the meeting. Current regulations specify that the records include such information as:</p> <ul style="list-style-type: none"> • detailed records of phone calls made/attempted and the results • copy of correspondence sent to the parents and any response received • detailed records of visits made to the parents' home or place of employment and results of those visits <p>Removes §300.345 (e) for the use of interpreters or other action appropriate to ensure that parents understand the proceedings of the IEP meeting. Rationale: these requirements are in other federal statutes.</p> <p>Removes §300.342 (b)(3) which currently requires each person responsible for implementing the IEP be informed of his/her specific responsibilities related to implementing the child's IEP, and the specific accommodations, modifications, and supports. Rationale: these requirements are inherent in the IDEA; i.e. in order to provide FAPE, the service provider needs to know that for which s/he is responsible.</p> <p>Removes §300.550 (a) that each eligible IDEA child be provided services in accordance with an IEP. Rationale: requirement is</p>
--	---

	unnecessary because the entitlement to FAPE includes the provision of special education and related services in accordance with an IEP.
<p>State Advisory Panel §1412 (a)(21)(A)</p> <ul style="list-style-type: none"> Retains the current provisions for members. Adds to the provision of state and local education officials, officials who carry out activities related to the McKinney-Vento Homeless Assistance Act. Also adds a representative from the State child welfare agency responsible for foster care. 	<p>Regulations incorporate the new statutory language in §§300.167 through 300.169 and generally retain current regulations. Additionally:</p> <ul style="list-style-type: none"> Removes §300.652 (b) under the panel's duties, the panel's advising on eligible students with disabilities in adult prisons. Rationale: this is considered a nonstatutory mandate. Removes §300.653 relative to the advisory panel's <u>procedures</u>; eliminating such mandates as: <ul style="list-style-type: none"> ✓ submit an annual report ✓ keep official minutes ✓ announce agenda enough in advance to afford interested parties a reasonable opportunity to attend ✓ have meetings open to the public <p>Rationale: to provide greater flexibility for states in the operations of advisory panels.</p>
<p>Secondary Transition</p> <p>See Guidance Document pp. 15–16 regarding the following changes:</p> <ul style="list-style-type: none"> Age requirement §1414 (d)(1)(A)(i)(VIII) 	<p>Proposed regulations incorporate the new statutory language and generally retain the other current provisions. Additionally:</p> <p>§300.320 (b) retains the current provisions except as follows:</p> <ul style="list-style-type: none"> <u>To the extent appropriate, and with the consent of the parents or child who has reached the age of majority, the LEA must invite a</u>

<ul style="list-style-type: none"> • IEP content §1414 (d)(1)(A)(i)(VIII)(aa) & (cc) • Summary of Performance §1414 (c)(5)(B)(ii) 	<p>representative of any participating agency that is likely to be responsible for providing or paying for transition services. [underscored is new language]</p> <ul style="list-style-type: none"> • Removes current requirement of LEA to take steps to obtain the participation of the other agency in the planning for transition services if the other agency does not send a representative. Rationale: unnecessary burden. • Reflects the IDEA '04 in excluding the age 14 requirements and age 14 language. Replaces the requirements with “for children younger than age 16, if determined appropriate by the IEP team”. <p>Also note that proposed regulation, §300.305 (e)(3), incorporates the IDEA '04 language for children when FAPE eligibility ends (who graduate with a regular diploma or reach the maximum age of FAPE eligibility), the LEA must provide the child with a summary of the child’s academic and functional performance, including recommendations on how to assist the child in meeting the child’s postsecondary goals.</p>
<p>Procedural Safeguards/Written Prior Notice</p> <p>See Guidance Document, pp. 17–18 regarding the following changes:</p> <ul style="list-style-type: none"> • When to provide §1415 (d)(1)(A)(i) through (iii); (n) • Content §1415 (d)(2)(E) • Posting on the web §1415 (d)(1)(B) • Written prior notice §1415 (n) 	<p>Proposed regulations incorporate the new statutory language and generally retain the other current provisions. Additionally:</p> <p>§300.501 (c)(4) removes the current requirement that LEAs keep a record of attempts to involve parents in placement decisions, including information consistent with the records that must be maintained if an IEP meeting is to be held without a parent in attendance. Rationale: this provides school personnel greater flexibility in how they document their efforts.</p>

<p>Discipline</p> <p>See Guidance Document, pp. 19 – 20 regarding the changes in the following areas:</p> <ul style="list-style-type: none"> • General standard §1415 (k)1)(A) • Interim alternative educational setting <ul style="list-style-type: none"> ✓ causes §1415 (k)(1)(G)(iii) ✓ timelines §1415 (k)(1)(G) • Stay-put §1415 (k)(4)(A) • Expedited hearing timelines §1415 (k)(4)(B) • Manifestation determination <ul style="list-style-type: none"> ✓ causation standard §1415 (k)(1)(E) (i)(I) & (II) ✓ FBA/BIP §1415 (k)(1)(D)(ii) • Basis of knowledge §1415 (k)(5)(C) 	<p>Proposed regulations incorporate the new statutory language and generally retain the other current provisions. Additionally,</p> <p>The current regulations require that when determining whether a series of short-term removals equate to a change in placement, triggering among other things, the need for a manifestation determination review, consideration must be given to the following factors: the total number of suspensions; the proximity of the suspensions; and the length of the suspensions. §300.536 adds a provision that when making these determinations, consideration also be given as to whether the child’s behavior is substantially similar to the child’s behavior in the previous and current incidents.</p>
<p>Surrogates</p> <p>See Guidance Document, pp. 22 – 23 regarding the changes in the following areas:</p> <ul style="list-style-type: none"> • Appointment §1415 (b)(2)(A)(i) & (ii); (B) • Homeless youth §1415 (b)(2)(B) • Qualifications §1415 (b)(2)(A) 	<p>Proposed regulations incorporate the new statutory language and generally retain the current provisions.</p>

<p>Mediation</p> <p>See Guidance Document, pp. 22 – 23 regarding changes in the following areas:</p> <ul style="list-style-type: none"> • When to request §1415 (e)(1) • Meeting regarding benefits of mediation §1415 (e)(2)(B) • Mediation agreements <ul style="list-style-type: none"> ✓ enforceability §1415 (e)(2)(F) ✓ content §1415 (e)(2)(F) 	<p>Proposed regulations incorporate the new statutory language and generally retain the current provisions.</p>
<p>Due Process</p> <p>See Guidance Document, pp. 24–28 regarding changes in the following areas:</p> <ul style="list-style-type: none"> • Statute of limitations for filing request §1415 (f)(1)(C) & (D) • Notice <ul style="list-style-type: none"> ✓ identification of issues §1415 (c)(2)(A) – (E); §1415 (b)(7)(A) & (B); §1415 (f)(3)(B); (n) ✓ content of notice §1415 (b)(7)(A)(ii) ✓ other §1415 (f)(3)(B) §1415 (f)(2)(B)(i); (n) • Resolution session §1415 (f)(1)(B)(i)-(iv) • Qualifications of hearing officers §1415 (f)(3)(A)(i)-(iv) 	<p>Proposed regulations incorporate the new statutory language and generally retain several current provisions.</p> <p>Additionally: §300.510 (b)(3) clarifies that the resolution session and due process hearing is delayed if the parent fails to participate in the resolution meeting. This is based on the legislative intent as found in H. Rep. No. 108-777, p. 114.</p>

<ul style="list-style-type: none"> • Hearing officer's decision • Filing complaint w. SEA • Filing litigation • Attorney's fees • Filing separate requests • Alternate means of participation in hearings 	<p>§1415 (f)(3)(E)</p> <p>§1415 (f)(3)(F)</p> <p>§1415 (i)(2)(B)</p> <p>§1415 (i)(3)(B)(1)(II) & (III)</p> <p>§1415 (i)(3)(D)(iii)</p> <p>§1415 (o)</p> <p>§1415 (f)</p>	
---	--	--

Questions related to this documents should be directed to:

H. Douglas Cox, 804-225-3252; Doug.Cox@doe.virginia.gov

Judy Douglas, 804-225-2771; Judy.Douglas@doe.virginia.gov

or staff in the Office of Dispute Resolution and Administrative Services, 804-225-2013